



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,257	01/09/2001	David Vardi	P/1318-117	6554

2352 7590 04/18/2003

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

EXAMINER

WEST, JEFFREY R

ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 04/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	VARDI ET AL.
09/757,257	
Examiner	Art Unit
Jeffrey R. West	2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 January 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-5 and 7-25 is/are rejected.

7) Claim(s) 6 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 27 January 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 8, 13, 15, 16, 18-22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,590,056 to Barritz in view of U.S. Patent No. 5,671,412 to Christiano.

Barritz discloses a method, apparatus, and corresponding system for monitoring, tracking, and controlling the use of software products over time by implementing a surveying program, a monitoring program, a reporting program, and a knowledge base (column 4, lines 35-43) wherein the monitoring program and software product under analysis are executed concurrently but as separate software programs (column 7, lines 9-12) and the knowledge base, supplemented by user inputted information (column 11, lines 16-25) and containing information on the software module records, product records, and vendor records (column 5, lines 35-65), is stored in a separate physical storage device than the other information logs (column 6, lines 5-9).

Barritz further discloses that the monitoring program extracts information about the software usage based on user supplied specifications such as types of modules,

locations of modules, or specific products, events, or periods of time (column 10, lines 45-49) and once the monitoring program has run for a sufficient period of time, the information is stored and processed in the information storage log according to user-requests or specified formats (column 10, lines 7-27), with associated time stamping (column 10, lines 28-33), for the end result of generating a plurality of usage reports (column 8, lines 43-63). Barritz discloses that the reporting program sorts, correlates, consolidates, summarizes, formats, and outputs reports (column 8, lines 36-42) as well as performs any necessary filtering (column 8, line 64 to column 9, line 11). Barritz then discloses that the output reports, indicating results of substantially all of the software produce on the computer (column 8, lines 49-58), may be displayed to the user by the surveying program itself, or sent to another computing facility for further manipulation and display (column 9, lines 34-47).

As noted above, Barritz teaches several methods and criteria for obtaining data relating to software usage as well as storing vendor based information in a knowledge base, however, Barritz does not include using the same methods and criteria to obtain computer capacity data for normalizing the corresponding software usage data.

Christiano teaches a software license management system for managing the usage of software products (column 1, lines 5-7) by determining the execution of the software (column 6, lines 43-52) and a providing a metering function that determines the amount of time, and the number of times, that the user activates the software to insure compliance with license agreements (column 7, lines 20-30). Christiano also

teaches determining the vendor and version information about the component using the software, when requesting usage of the software (column 9, lines 9-20), and, during software usage, providing the stored vendor information to determine the amount of usage remaining on the license based on an obtained environmental resource capacity index number, that is developed through use of a license manager sever (column 4, lines 39-44) and based on a particular computer system's processor (column 16, lines 56-65). Christiano then teaches using the environmental resource capacity number to combine the corresponding usage information with the capacity data to form raw, normalized software data to account for difference in the hardware speed (column 16, line 52 to column 17, line 15), such as the speed of the processor (column 4, lines 9-11), or other time-variant capacity data (i.e. disk drive space or memory space) (column 17, lines 6-9).

It would have been obvious to one having ordinary skill in the art to modify the invention of Baritz to include obtaining computer capacity data for normalizing the corresponding software usage data, as taught by Christiano, because, as suggested by Christiano, the combination would have fairly adjusted the software usage data to account for actual usage differences caused by platform specifications (column 2, lines 58-65). Furthermore, although the invention of Baritz and Christiano doesn't specifically disclose restating the results of the software usage data based on the variations over time of the computer capacity data, it would have been obvious to one having ordinary skill in the art to include this limitation, because the combination

would have provided the accurate usage data to the user, rather than simply adjusting the usage data without notifying the user.

Also, since Barritz does disclose supplementing the knowledge base with user supplied information (column 11, lines 16-25) it would have been obvious to one having ordinary skill in the art to do so by accessing the knowledge base via an application program interface because it would have provided a user-friendly method of providing the necessary information without requiring programming changes.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz in view of Christiano, and further in view of U.S. Patent Application Publication No. 2002/0023260 to Isman.

As noted above Barritz and Christiano teach all of the features of the claimed invention except for basing the correlation between capacity data and software usage on statistical analysis.

Isman teaches a method for analyzing the capacity of parallel processing systems by evaluating the performance of an application executing on a parallel processing system based on assumed data set sizes and variations of the architecture of the system (0011). Isman teaches implementing this method by creating a graph and a corresponding file that describes the application on the parallel processing system and using, in conjunction with the processing speeds of the system components, the flow of data, and the size and counts of data records throughout the system, determine equations for the amount of time required for each

component (0012). Isman also teaches representing the execution of a particular application with the graph (0028), and details about the parallel processing system such as processing rate in MB/sec (0032), obtained through monitoring of the software (0029), that are created in the table file to calculate the processing and execution times (0034), time based capacity data (0060), and statistical data over time (0063 and 0064) that can be used to monitor the execution of the application on the system and providing this information to a user (0054 and Figure 5).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz and Christiano to include basing the correlation between capacity data and software usage on statistical analysis, as taught by Isman, because, as suggested by Isman, the combination would have provided a method for analyzing the performance of an application executing on a system by taking into account all the factors that effect the execution of the application over time using statistical trends in order to obtain accurate results (0009).

4. Claims 7, 11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz in view of Christiano and Isman, and further in view of U.S. Patent No. 6,055,492 to Alexander, III et al.

As noted above, Barritz, Christiano, and Isman teach many features of the claimed invention including determining the capacity data based on statistical data over time, but do not teach determining a computer index to represent the capacity data.

Alexander, III, teaches a system and method for program event tracing on a variety of hardware platforms, including parallel processors (column 3, lines 28-33), by obtaining dynamic processing data, such as the statistical amount of time spent performing a particular processing function (column 4, lines 44-58), and associated time stamps (column 4, lines 17-25), which are stored along with related identification information in an index (column 7, lines 52-65 and Figure 8).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz, Christiano, and Isman to include determining a computer index to represent the capacity data, as taught by Alexander, III, because, as suggested by Alexander, III, the combination would have provided a well known method for improving analysis by easily and clearly relating the information corresponding to a device of interest (column 7, lines 60-62). Further, although the index disclosed by Alexander, III, does not include average data, since Alexander, III, does teach determining other statistical usage data such as cumulative data, it would have been obvious to one having ordinary skill in the art to modify the invention to include average data because the combination would have provided a more detailed information for the analysis of the usage data.

5. Claims 9, 10, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz in view of Christiano, and further in view of U.S. Patent No. 4,937,863 to Robert et al.

As noted above, Barritz and Christiano teach many of the features of the claimed including determining capacity data based on CPU speed, but do not teach accessing a knowledge base and deriving from it information to compute the computer capacity data.

Robert teaches a software licensing management system that determines if the usage of the licensed program is permitted under usage limitations stored in a table format (column 4, lines 11-19) as well as allowing the digital data processing system to control use of a licensed program based on criteria stored in a license data base (i.e. knowledge base) for providing pricing based on a per processor method rather than all of the processors (column 5, line 63 to column 6, line 8). Robert also teaches that the data base comprises a number of fields including producer name, vendor name, and processor power (column 6, lines 15-21 and 41-47) and uses this processor power data, with or without data that relates to the number of users, to adjust the usage data of the program (column 6, lines 47-60).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz and Christiano to include accessing a knowledge base and deriving from it information to compute the computer capacity data, as taught by Robert, because, as suggested by Robert, the combination would have provided a method for storing the data that is used to determine the usage data of the license in a form that allows easy access by the means for determining the capacity data (column 1, lines 58-63 and column 2, lines 11-20).

6. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz in view of Christiano and further in view of U.S. Patent No. 5,864,620 to Pettitt.

As noted above, Barritz and Christiano teach all the features of the claimed invention including distributing software to users based on license information (Christiano, column 3, lines 47-54) but do not teach specifying that the output information be sent to a computing facility that comprises a central clearing house.

Pettitt teaches a method and system for controlling distribution of software in a multi-tiered distribution chain comprising a software author, one or more distributors, one or more optional resellers, an end user, and a license clearing house (column 3, lines 27-36) that performs a validation step to produce a code that indicates whether or not a valid software distribution transaction is authorized (column 4, lines 52-62).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz and Christiano to include specifying that the output information be sent to a computing facility that comprises a central clearing house, as taught by Pettitt, because, as suggested by Pettitt, the combination would have provided a method for allowing the distributor of the software to distinguish authorized users from unauthorized users in order to determine proper payment schedules (column 3, lines 13-26).

Claim Objections

7. Claim 6 is objected to as being dependent upon a rejected base claim, but would

be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 27 January 2003 have been fully considered but they are not persuasive.

It is first noted that in the remarks, Applicant states that the method of claim 1 comprises "running a first software and determining the capacity of the computer dynamically over time and obtaining computer capacity data." The Examiner submits that the amendment to the claims does not contain this language, instead the claim recites determining "the capacity of the computer over time" and "the usage of the software products on the computer dynamically over time." Claim 25 contains similar language.

Applicant also argues that "there is nothing in Christiano '412 that describes any software for determining what that patent refers to as the 'environmental resource capacity'. Secondly, there is certainly no software which carries out that task to determine an environmental resource capacity 'dynamically over time', for the purposes of carrying out the correlation function of the present invention." Applicant further argues in support that "the text at column 17, commencing with line 8, suggests that the environmental resource capacity is a set number, for example, the numerals 2 or 1, which is used as the "scaler" similar to the prior art scaler which is described at the applicant's introductory page." The Examiner maintains that

Christiano teaches license server software on a microprocessor (column 9, line 67 to column 10, line 2) that determines an environmental resource capacity (column 19, lines 34-36) using several methods. One method is based upon hardware speed, as indicated by the "scaler". Christiano also teaches, however, determining the environmental resource capacity using disk drive space or memory space (column 17, lines 6-9) which are capacity data well known to change dynamically over time. Further, since the invention of Christiano teaches that the requesting client include a measure of the current capacity data (column 4, lines 41-44 and column 21, lines 34-40), it is considered inherent that the capacity data sent would be updated in response to any changes to the current value (i.e. dynamic).

Applicant also argues that "claim 7 calls for the development of an index, which represents variations of the computer capacity data over time which is not disclosed in any of the references of record. Similarly, claim 8 speaks of running the first and the second claimed software as separate software programs. This feature is not disclosed in any of the reference of record. Another representative example is claim 11, which calls for a specific combination of computer parameters to develop the index, a feature which is not shown in any of the prior art of record."

As noted in the previous Office Action, with respect to claims 7 and 11, the invention of Baritz, Christiano, and Isman teaches generating capacity data taking into account parameters including CPU speed and Alexander, III et al. teaches generating an index for the well-known reason of improving analysis by easily and clearly relating the information corresponding to a device of interest. Also, with

respect to claim 8, the usage monitoring of Barritz and the capacity monitoring of Christiano are separate software programs similar to the Barritz teaching of a monitoring program and a software product under analysis being executed concurrently but as separate software programs (column 7, lines 9-12).

With respect to claims 13-24, Applicant fails to provide any reasoning of why the prior art of record fails to meet the claimed limitations. Therefore, the Examiner maintains the previous rejection with respect to these claims.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. West whose telephone number is (703)308-1309. The examiner can normally be reached on Monday through Friday, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (703)308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7382 for regular communications and (703)308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

jrw
April 15, 2003


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800